

REMARKS

Claims 26 and 31-60 are pending and stand rejected. Claims 34, 36-44, 59, and 60 were previously withdrawn.

Applicant is adding new claims 61 to 64. Support for the new claims can be found throughout the specification as filed, for example in Example XI at page 200, line 3 to page 201, line 28, and in Table 11. Applicant asserts that no new matter has been added by way of these new claims.

Claim Rejections – 35 U.S.C. §103(a)

The Examiner has stated that claims 26, 31 to 33, 35, and 45 to 58 are newly rejected under 35 U.S.C. § 103(a) as being unpatentable over Kondo *et al.* in JP 2000336024A (hereinafter referred to as Kondo) in view of Cyr in US 2004/0175439 (hereinafter referred to as Cyr A), and further in view of Cyr in US 2006/0228426 (hereinafter referred to as Cyr B).

We note that, as of the priority date of the instant application, November 18, 2003, Cyr B had been assigned to Biopharmacopae Design International Inc. (Biopharmacopae), who is also the Assignee for the instant application. As such, we believe that 35 U.S.C. § 103(c) disqualifies Cyr B as prior art under 35 U.S.C. § 103(a), since at the time the claimed invention was made, the subject matter of Cyr B had been assigned to Biopharmacopae, and the claimed invention was subject to an obligation of assignment to Biopharmacopae (and was, in fact, assigned to Biopharmacopae in November 2006). In light of the preceding, we believe that the Examiner has improperly cited Cyr B in the rejection raised under 35 U.S.C. § 103(a). Our understanding is that in order to address this point it is necessary only to include a statement to this effect in the Response. If, however, our understanding is incorrect and additional documentation is necessary to support such a statement, please advise.

In view of the above, we believe the Examiner's obviousness rejection can rely only on Kondo in view of Cyr A. In this regard, we note that such a rejection was raised

against pending claims 26, 30 to 33, 35, and 45 to 58, in the previous Office Action, dated March 20, 2009, and further note that claim 30 has since been cancelled. In the Response to the previous Office Action, this rejection was addressed by presenting arguments that it is well known in the art that the ability of a compound or composition to moisturise the skin is not necessarily an indication that the compound or composition inhibits MMP-9 or induces collagen production and thus that the teaching of Kondo describing a *Chenopodium quinoa* plant extract as having a moisturising effect on the skin does not indicate its ability to inhibit MMP-9 or induce collagen production, nor does it indicate that the extract of Kondo can affect processes which depend on the latter activities, such as the formation of wrinkles, loss of elasticity, inflammation, and the like. Moreover, Cyr A does not teach a *Chenopodium quinoa* plant extract that is capable of modulating one or more cellular activities in skin cells selected from the group consisting of attenuating endothelial cell migration, increasing collagen production, inhibiting ultraviolet-induced extracellular protease activity and inhibiting dermal contraction, as recited in pending claim 26. Furthermore, pending claims 47, 48, 49, and 56 are directed to methods that rely on the above-noted abilities of the recited plant extracts, which are not taught by Kondo or Cyr A.

We note that the preceding arguments were successful in overcoming the Examiner's previous rejection in this regard, since this rejection has not been reiterated in the current Action and the Examiner has specifically indicated at page 2 of the Action that any rejection not reiterated has been withdrawn.

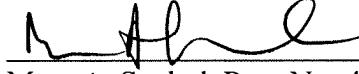
As indicated above, we have also added new dependent method claims 61 to 64, specifying that the dermatological formulation increases collagen production in the skin of the subject. We believe that for the reasons reiterated above, these new claims are also inventive over Kondo in view of Cyr A. In light of the preceding, we believe the claims submitted herewith comply with 35 U.S.C. § 103(a), and respectfully request that the Examiner withdraw this rejection.

The Applicants respectfully request entry of these amendments as provided herein. The application is believed to be in condition for allowance, and a Notice of Allowance is hereby respectfully requested. If the Examiner has any questions or needs any additional information, the Examiner is invited to telephone the undersigned.

The Commissioner is authorized to charge any fee deficiency or credit any overpayment to Deposit Account 50-4561.

Respectfully submitted,

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By: 

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